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*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JEREMIAH REVITCH, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

NEW MOOSEJAW, LLC and  
NAVISTONE, INC.,

Defendants.

Case No. 3:18-cv-06827-VC

**PLAINTIFF'S AND NEW  
MOOSEJAW, LLC's JOINT  
REQUEST FOR DISMISSAL**

1 Plaintiff Jeremiah Revitch and Defendant New Moosejaw, LLC (the “Parties”), by and  
2 through their respective attorneys, hereby make this joint submission, pursuant to Paragraph 48 of  
3 the Court’s Standing Order for Civil Cases, to inform the Court that they have reached a pre-  
4 certification individual settlement of this action and to request that the Court enter an order  
5 dismissing this Action with prejudice, save solely with respect to defendant NaviStone’s pending  
6 counterclaim against plaintiff Revitch individually.

7 Although Plaintiff recently moved for class certification, no class has been certified.  
8 Defendant vigorously disputes in the first instance whether Plaintiff is even a member of the  
9 proposed class as his name does not appear on the Computech List. Defendant further contends that  
10 it would be extremely difficult if not impossible to identify other putative class members given the  
11 nature of Plaintiff’s claim. In any event, no member of any putative class will be bound by the  
12 dismissal. Where, as here, the parties do not seek dismissal of the class members’ claims with  
13 prejudice, “they are not impacting the rights of potential class members.” *Houston v. Cintas Corp.*,  
14 2009 U.S. Dist. LEXIS 33704 (N.D. Cal. Apr. 3, 2009).

15 Moreover, further notice of the dismissal would not be warranted under *Diaz v. Trust*  
16 *Territory of the Pacific Islands*, 876 F.2d 1401, 1408 (9th Cir. 1989). First, the Parties are not  
17 aware of any putative class members who are relying on the pendency of this case, which has  
18 received no mainstream publicity and only a rare mention in the legal press. Second, the pendency  
19 of this putative class action tolled the applicable statute of limitations for individual members of the  
20 putative class. *See Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 553-54 (1988). To the extent  
21 that any individual member of some putative class has a viable claim, which Defendant disputes, the  
22 Parties have no reason to believe that they will lose such a claim as a result of this dismissal. Third,  
23 Plaintiff’s counsel represents that there has been no concession of putative class interests by the  
24 Plaintiff or his counsel, much less in order to further their own interests.

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1 Last, even though the Action will be dismissed with prejudice as to the operative complaint  
 2 and defendant NaviStone is receiving a general release from the named individual plaintiff,  
 3 NaviStone evidently wants to address the Court separately as to whether its counterclaim for  
 4 declaratory relief against plaintiff Revitch can proceed. For their part, Plaintiff and Moosejaw  
 5 contend that, as a result of the settlement, that counterclaim is now moot.

6 For all of these reasons, and because notification to unidentified putative class members, if  
 7 possible, would be inordinately burdensome and costly, the Parties respectfully submit that further  
 8 notice of the dismissal is unwarranted. The Parties hereby jointly stipulate and request that the  
 9 Court dismiss the entire Action as to all parties claims with prejudice and defer to the Court whether  
 10 the sole remaining claim, which is NaviStone's pending counterclaim against plaintiff Revitch for  
 11 declaratory relief, should likewise be dismissed as moot.

12  
 13 Dated: February 3, 2021

**BURSOR & FISHER, P.A.**

14 By: /s/ Scott A. Bursor  
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**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1**

I, Scott A. Bursor, attest that concurrence in the filing of this document has been obtained from each of the other signatories. Executed on February 3, 2021 in Miami, Florida.

/s/ Scott A. Bursor

Scott A. Bursor